

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY  
Civil Action No. 08-342

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JOEL SCHNEIDER  
U.S. Magistrate Judge

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In Regard to the Matter of:

Bayside State Prison  
Litigation

OPINION/REPORT  
OF THE  
SPECIAL MASTER

EDWIN TORRES

-vs-

WILLIAM H. FAUVER, et al,

Defendants.  
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\* \* \* \* \*  
THURSDAY, APRIL 16, 2009  
\* \* \* \* \*

BEFORE THE HONORABLE JOHN W. BISSELL, SPECIAL MASTER

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5 Transcript of proceedings in the above  
6 matter taken by Theresa O. Mastroianni, Certified  
7 Court Reporter, license number 30X100085700, and  
8 Notary Public of the State of New Jersey at the  
9 United States District Court House, One Gerry Plaza,  
10 Camden, New Jersey, 08102, commencing at 11:56 AM.  
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22 Audubon, New Jersey 08106  
23 856-546-1100  
24  
25

**A P P E A R A N C E S:**

LOUGHRY & LINDSAY, ESQUIRES.  
BY: LAWRENCE W. LINDSAY, ESQUIRE  
330 MARKET STREET  
CAMDEN, NEW JERSEY 08102  
856-968-9201  
ATTORNEYS FOR THE PLAINTIFFS

ROSELLI & GRIEGEL, PC  
BY: MARK ROSELLI, ESQUIRE  
- and -  
BY: KENNETH W. LOZIER ESQUIRE  
1337 STATE HIGHWAY 33  
HAMILTON SQUARE, NEW JERSEY 08690  
609-586-2257  
ATTORNEYS FOR THE DEFENDANTS

1 JUDGE BISSELL: I'm now reopening  
2 proceedings in the case of Edwin Torres, docket  
3 number 08-342.

4 This opinion/report is being issued  
5 pursuant to the directives of the Order of Reference  
6 to a Special Master and the Special Master's  
7 Agreement and the guiding principles of law which  
8 underlie this decision to be applied to the facts  
9 upon which it is based as set forth in the jury  
10 instructions in the Walker and Mejias jury charges to  
11 the extent applicable to the allegations of  
12 Mr. Torres.

13 As finalized after review under Local  
14 Civil Rule 52.1, this transcript will constitute the  
15 written report required under paragraph seven of the  
16 Order of Reference to a Special Master.

17 Mr. Torres was in F Unit, second tier,  
18 on the 30th of July, 1997, the date of Officer  
19 Baker's murder. He testifies and I so find that in  
20 the afternoon of that date the SOG officers came to  
21 his facility for the purpose of removing people from  
22 the cells and taking them to the gym.

23 He testifies he was hit in the head  
24 when told to hurry up and get undressed fast. He  
25 couldn't see who hit him in the head from behind, it

1 felt like something real hard, like a piece of metal.  
2 It made him move toward the wall, it made him dizzy,  
3 possibly even pass out. He did, however, indicate  
4 that there was no breaking of the skin, that it had  
5 swelled up somewhat that night and the next day.

6 He testifies later that he was escorted  
7 to the gym, handcuffed coming and going from the gym.  
8 That appears to be the only incident of assault on  
9 that date.

10 He testifies, however, that on the next  
11 day, the 31st of July, a bag lunch was brought to his  
12 cell by SOGs, that his lunch was spit on, stomped on  
13 and kicked into his cell whereupon one of the people  
14 called him a Spic and said we've got something for  
15 you.

16 He testified further that some  
17 ten minutes later four to five of these officers who  
18 were SOGs with ski-type masks over their faces came  
19 into his cell. They told him to get up and face the  
20 window, kicked him and punched him, he fell to the  
21 ground, he lost consciousness to some extent despite  
22 the fact that he had not disobeyed any orders and had  
23 no charges eventually filed against him.

24 He testified that as a result of this  
25 injuries to his left leg and the left part of his

1 back ensued.

2           There is evidence that indeed in the  
3 months and years that followed he did have difficulty  
4 with back pain and that at least when transferred to  
5 Rahway, he sought some medical attention. He also  
6 received at Southwoods some treatments including hot  
7 packs and treatments on his leg.

8           He testifies also that in ensuing time  
9 periods while still in the prison setting he was  
10 given a cane, a back brace and a knee brace. These  
11 treatments helped, but did not obviate the situation.

12           There was also some evidence presented  
13 that in the course of the assaults upon him he  
14 received some sort of an eye injury.

15           Also introduced into evidence were  
16 Exhibits D-73 and D-74. Now, it is not entirely  
17 clear whether D-74 was an attachment to his  
18 Administrative Remedy Form D-73. The record was  
19 confused and, in fact, the witness was somewhat  
20 confused about that. But there is no question that  
21 D-74 was generated by him and in its closing  
22 paragraph he states that as of December 31, 2000, I  
23 am receiving physical therapy treatments at  
24 Riverfront State Prison, et cetera. So that D-74  
25 obviously was authored no earlier than the 31st of

1 December, 2000, but still relatively contemporaneous  
2 with the events in question.

3 I note that D-74 contains a lengthy  
4 recitation of the events which he alleged occurred to  
5 him on the 30th and 31st of July, 1997 and that it's  
6 consistent with his testimony here before me in these  
7 proceedings.

8 Mr. Torres even went so far as to  
9 testify about some doctor's advice at East Jersey  
10 that a disk had been fractured. However, the medical  
11 records which were presented here do not confirm  
12 anything that severe and I make no finding of a  
13 fractured disk. Although as I mentioned before,  
14 there is evidence to support some continuing back and  
15 leg pain.

16 P-36 was also introduced into evidence.  
17 This is a collection of medical records, most of  
18 which are appended to what is called an  
19 electrodiagnostic study performed at Saint Francis  
20 Medical Center on this man on or about the 12th of  
21 October, 2000.

22 Once again, in recounting the events  
23 that occurred to him, he claimed that in 1997 he was  
24 slammed into the backboard of a bed and still had  
25 pain and numbness in his left leg. There was some

1 notation in the objective findings of a decreased  
2 lumber flexion, that's in the lower back, of course,  
3 and an apparent radiculopathy (nerve reactions)  
4 through his left leg which is also consistent with a  
5 lower back trauma.

6 His testimony in court was that while  
7 being assaulted in his cell he was slammed into a  
8 railing on the side of his bed as opposed to a  
9 backboard. I don't consider that a significant  
10 discrepancy. And apparently as of July of 2000 he  
11 was wearing a back brace and also complaining of knee  
12 pain that he ascribed to an accident in 1997.

13 However, there are, once again,  
14 considerable inaccuracies in his testimony that lead  
15 me to conclude that he's not sustained his burden of  
16 proof with regard to the injuries which he asserts.  
17 And much of this is refuted by the testimony of  
18 Officer Church.

19 For instance, plaintiff talks about the  
20 SOGs wearing ski masks or similar types of masks that  
21 were worn under the helmets to cover up the entire  
22 face except for eyes and mouth holes. Officer Church  
23 testified without equivocation that this is not a  
24 part of the SOG uniform and that during his tour  
25 there and throughout the lockdown he never saw SOGs



1 wearing masks of that kind.

2 Mr. Torres also testified that upon  
3 return from the gym on the 30th of July as a result  
4 of the search his cell had been completely trashed,  
5 with the contents of his property strewn all over the  
6 place and in total disarray. I'm paraphrasing.

7 The reports of the ombudsmen, however,  
8 who were observing this movement including the  
9 condition of the cells as a result of the search  
10 completely refute that characterization. Officer  
11 Church himself was there on duty in F Unit when the  
12 inmates returned at approximately one AM, early in  
13 the morning of July 31st. He testified that the  
14 cells had not been trashed in this fashion; thereby  
15 severely impacting Mr. Torres' credibility.

16 Third, plaintiff talks about the SOGs  
17 having delivered lunches on the 31st of July and then  
18 returning to beat him up when they detected perhaps  
19 some kind of an attitude by this "Spic", to quote  
20 him. The evidence in this case is unequivocal and  
21 frankly unassailable that the SOG officers did not  
22 deliver the lunches during the lockdown. The BSP  
23 officers did in groups usually of three including a  
24 supervisory sergeant, not geared up into the sort of  
25 riot gear that the SOGs wore on a permanent basis.

1 I note specifically that no SOG unit  
2 was logged into F Unit on July 31st. These records  
3 are not infallible, but I have yet to see a situation  
4 where if a SOG team was called in for one reason or  
5 another, notations in the log for that unit would not  
6 have reflected it. And as I mentioned already, they  
7 did not deliver the lunches. Accordingly, I reach a  
8 determination that they were not there on the 31st of  
9 July and, therefore, did not administer any  
10 punishment to him on that occasion.

11 I note also Officer Church's testimony,  
12 and this is really beyond refutation, that it's a  
13 two-step process even to gain access to cells and  
14 that the first of those steps requires the housing  
15 officer at the podium to open what are called the  
16 snap locks on the tier after which keys are issued to  
17 an officer to go down and open a particular cell.

18 Under those circumstances I  
19 additionally find it not credible that SOG officers  
20 on the 31st of July would have gone down to his cell,  
21 opened it up and beaten him on that occasion.

22 Finally, Mr. Torres has acknowledged  
23 that he got into a fight in December of 1997, a fight  
24 which actually got him transferred out of Bayside  
25 State Prison in January of 1998. Given the

1 considerable doubt with regard to the accuracy of his  
2 testimony and the other particulars that I've  
3 mentioned here, it's entirely consistent that the  
4 injuries of which he complains could well have come  
5 from that fight. He, of course, did not say so, but  
6 under all the circumstances, that is not an  
7 inappropriate inference and could well explain the  
8 continuing difficulties with his back and knee which  
9 is demonstrated in this record.

10 Accordingly, under all of the  
11 circumstances here, I find that Mr. Torres, although  
12 relatively consistent in his testimony from the year  
13 2000 and also at this point, 2009, has just asserted  
14 too many things that are not credible and in some  
15 cases impossible.

16 I find he's not sustained his burden of  
17 establishing his cause of action here.

18 Finally, although not every item of  
19 evidence has been discussed in this opinion/report,  
20 all evidence presented to the Special Master was  
21 reviewed and considered.

22 For the reason set forth above, I  
23 recommend in this report that the district court  
24 enter an order and judgment of no cause for action  
25 with regard to Edwin Torres.

1 Counsel that concludes proceedings as  
2 far as I'm concerned for today. Anything further  
3 before we adjourn? Mr. Lindsay?

4 MR. LINDSAY: No, sir.

5 JUDGE BISSELL: Defense counsel?

6 MR. LOZIER: No, sir.

7 JUDGE BISSELL: All right. Thank you.

8 MR. ROSELLI: See you tomorrow.

9 (Hearing Adjourned)

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## C E R T I F I C A T E

I, Theresa O. Mastroianni, a Notary Public and  
Certified Shorthand Reporter of the State of New  
Jersey, do hereby certify that prior to the  
commencement of the examination,

Edwin Torres,  
was duly sworn by me to testify the truth, the whole  
truth, and nothing but the truth.

I DO FURTHER CERTIFY that the foregoing is a  
true and accurate transcript of the testimony as  
taken stenographically by and before me at the time,  
place, and on the date hereinbefore set forth, to the  
best of my ability.

I DO FURTHER CERTIFY that I am neither a  
relative nor employee nor attorney nor counsel of any  
of the parties to this action, and that I am neither  
a relative nor employee of such attorney or counsel,  
and that I am not financially interested in the  
action.

Theresa O. Mastroianni  
Theresa O. Mastroianni, C.S.R.  
Notary Public, State of New Jersey  
My Commission Expires May 5, 2010  
Certificate No. XIO857  
Date: April 16, 2009